

ARIZONA REGISTRAR OF CONTRACTORS

QUARTERLY NEWSLETTER – JANUARY 2009



Message from the Director

Armando A. Contreras
Director of the Registrar of Contractors



Happy New Year!

It has been four months since I received my appointment to become Director at the Registrar of Contractors. This time of year offers me the opportunity to review and evaluate the progress made at the ROC over the past twelve months. As you know, the ROC undertook a significant challenge to improve our efficiencies while providing a higher level of service to contractors and consumers. As I look back to January of 2008, significant and vital improvements to ROC operations are apparent.

ROC personnel have worked diligently in 2008 to meet the goals established by the executive staff. Agency personnel were asked to increase their productivity despite the economic slowdown and loss of manpower that has adversely affected the agency. Their increased efforts have allowed most departments to decrease their complaint response times while keeping their quality of work at a high productive level. For example, the inspections department has decreased their on site inspection time to 31 days from the date of complaint (down from 37+ days). The investigations department has increased its criminal case filings and as a result realized an overall 36.5% decrease in the number of complaints filed against unlicensed contractors this year when compared to the same period last year. I have no doubt ROC employees will continue their diligence and hard work to meet our 2009 objectives.

The ROC continues to work closely with developers, contractors and their associations, government officials and citizens to provide positive changes to Arizona's construction industry. Such changes include the review of workmanship standards to make them more clear, concise and understandable as well as adding new subsections and additional trade standards.

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We have also reconstituted the membership of our Labor Advisory Council to promote skilled labor in Arizona. The additional council members include citizens from local universities and trade schools. This collaboration, along with input from other advisory boards, will positively affect services rendered by the ROC and address issues associated with the skilled labor shortage.

In turning my attention to 2009, I look forward to my continued strong relationship with the construction industry. The revival of this industry cannot be achieved without government and industry cooperation. Working together, we can assist Arizona out of the economic downturn that currently envelops the state. Outreach Programs, developing new partnerships, continuing education opportunities and effective communication will be the cornerstones of my administration.



SUMMARY OF THE INVESTIGATIONS DEPARTMENT

By Robert Chavez, Chief of Investigations

Around the state of Arizona, the ROC Investigations Department continues to be active. This month we combined Investigators with Inspectors to conduct a two day sweep operation in the Payson area. The operation paired an Inspector and Investigator together to conduct an on job site inspection of this location. Four teams checked active job sites and discovered a number of violations. The group made a total of 102 contacts. There were 2 unlicensed contractors discovered. A total of 3 Cease & Desist orders issued. Also, 23 unlicensed advertising cases were made.

During this same time, our Investigator in Show Low discovered and closed down a Transient Criminal crew for unlicensed contracting on an asphalt paving scam on an elderly male victim. The Show Low Police Department assisted and recovered some stolen construction equipment that was found in the possession of this crew. The contract amount was approximately \$2,500.

In August the Investigations Department conducted a sting operation with the assistance of the City of Benson personnel and the Department of Public Safety. In this three day operation the Investigators were successful in making 18 cases for unlicensed contracting and advertising. The total bids from these unlicensed contractors totaled \$182,856.84.

The ROC will continue to conduct sweep and sting operations. Please contact us if you have a specific area of concern.



LEGAL RECAP

By William Albright, Assistant Director of Operation



Recovery Fund

The Residential Contractors' Recovery Fund continues to operate smoothly despite the fact that \$6.6 million was swept out of the Fund balance during the last legislative session. We are projecting that approximately \$3.25 million will be paid out in claims in the fiscal year to date by the end of December 2008. In that regard, the Fund has received 439 new claims this fiscal year through November 30, 2008. Fund employees have just completed a project to bring current their subrogation claims forwarded to the Attorney General's Office for collection. During that project, they filed against 69 licensed contractors' bonds and collected a total of \$73,991.03. Also, they have suspended 134 associated licenses as a result of payouts and

subrogated claims amounting to \$7,464,131.40 to the Attorney General for collection. In addition, the staff continues to work with the staff of the AG's Collections and Bankruptcy Section to make the transfer of subrogation claims more efficient.

Legal Department

The volume of cases being forwarded from Inspections to the Legal Department for a formal citation has continued to grow at a record pace resulting in ever longer timelines to get a case formally cited. While traditionally our inspectors were able to resolve eighty percent of cases in the field with only twenty percent being forwarded to the Legal Department because one of the party's requested that the matter be cited to hearing, we are now at a fifty-fifty ratio. What that means in real numbers is that ten years ago less than 1,000 cases were forwarded to Legal. By 2005, a little over 3,800 were sent on and today we project approximately 6,500 will be sent for formal citation. In an effort to deal with this deluge, the Legal Department will be bringing on board two temporary administrative assistants and one temporary paralegal. Additionally, they will add a second scanning machine to get these cases scanned into our imaged system as the Legal Department is where complaints are initially scanned.



WHAT IS "CONTRACTING BEYOND THE SCOPE OF THE LICENSE?"

By Paul Terek, Assistant Chief of Licensing



There are plenty of examples of work that is not included in the scope of a license. But the easiest way to understand "contracting beyond the scope of a license" is to focus on the trade that is included in the scope. For example, the C-37 Plumbing, including Solar license covers the "installation and repair of water and gas piping systems, fire protection systems, and sewage treatment systems."

If a licensed plumber contracts to install a water line from the house to the street, the plumber could perform "excavation" to dig the trench for the plumbing. This is not out of scope because Arizona Revised Statutes 32-1105.D allows specialty contractors to perform other specialty trades that are "incidental or supplemental" (as in the case of a waterline that requires a trench). The pipe cannot be installed without digging a trench. If a concrete driveway has to be cut open to allow the installation of the waterline, the plumber may saw-cut the driveway to allow for trenching and installing the pipe. After the pipe was installed and the soil was back filled, the plumber could replace the concrete that he removed. However, the plumber would be "contracting beyond the scope of the license" if his scope of work included removing and installing the entire driveway. The plumber would be out of scope even if he hired a properly licensed contractor (C-9 Concrete) to replace the driveway; the concrete contractor would also be in violation.

The Registrar of Contractors encourages contractors to become familiar with the statutes and rules by visiting our website. In addition, a contractor may receive a warning letter if we are notified that a licensee is contracting beyond the scope of their license. After three warnings, the Registrar may request that a licensee be brought up for discipline. Penalties may include license suspension and/or fines all the way up to losing your license.

To sum it up; Don't contract or perform work that is outside of the scope of your license. If in doubt, you can visit our web site or call us directly. Contracting and performing work that is beyond the scope of your license is a wrongful act and grounds for suspension or revocation of your contracting license under Arizona Revised Statutes § 32-1154.A.7, and 17. If you are hired by a contractor that is not licensed to contract the work that you are performing, you could be penalized for committing the wrongful act of "knowingly entering a contract with a contractor for work to be performed . . . with a person not duly licensed in the required classification," under Arizona Revised Statutes § 32-1154.A.7, and 14.



TSD UPDATE

By Gene Martel, Assistant Director of Technology



Technical Service Division's primary focus is on the ROCIMS project. This is the replacement project for the agency's aging License Management System (ROCDATA/OpenDox) and associated telecommunications and personal computing environments. This is a collaborative effort between the Government Information Technology Agency (GITA), the state web portal Arizona @ Your Service and the Department of Liquor License and Control (DLLC). The contract for the effort was approved in July of 2008 and work commenced at that time. At present the project is in the data migration and system configuration stage. The project will be completed in July of 2009.

The project will also include the acquisition and implementation of the following equipment and services:

- Field ready laptops for all Investigators and Inspectors to conduct all operations wirelessly while away from their offices;
- Scanning devices to support the imaging of documents presented to the ROC. Scanners are planned for installation at customer service windows and at strategic workstations within the ROC to process both small volume and batch scans.
- Desktop and large volume printers to support the License Management System's printing requirements;

- Implementation of a Fiscal Management component to facilitate business processes within the Administrative Services Division (ASD). This would include Asset Management, Procurement Processing and a localized interface to the Arizona Financial Information System (AFIS);
- Field printers to allow Investigators to issue citations while in the field; and
- Wireless LAN access throughout the ROC areas in the 3838 facility.



AIDING AND ABETTING, COMMERCIAL VS. RESIDENTIAL

by Bob Mechsner



A number of complaints have been received recently by the ROC where properly licensed sub-contractors or general contractors have filed no-pay complaints against unlicensed contractors. By unlicensed, I'm referring to a commercial contractor doing residential work, or a residential contractor doing commercial work. There is a misconception that these contractors are out of scope, but they are actually contracting without a license. A carpenter doing electrical or a landscaper doing roofing, all within their respective commercial/residential designation would be out of scope.

A recent case had a K-11 (residential and commercial electrical), filing a no-pay complaint against a B residential that was doing a commercial project. We were unable to take this to an administrative hearing; it instead went to Investigations for a possible citation for unlicensed contracting by the respondent. The complainant is now warned that they are aiding and abetting an unlicensed contractor. The irony of this is that the complainant has the proper license.

A further example is a no-pay complaint filed by an A- General Engineering Contractor, the complaint we received involved a condominium complex built by a B- General Residential Contractor. The B- contractor was properly licensed to perform and/or sub-contract work, to residential contractors, within the boundaries of the condo complex. However, in this case, the B- General hired a properly licensed A- General Engineering contractor to perform work within a public right-of-way (not within the condominium boundaries). An A- classification license is a commercial license; therefore the B- contractor was contracting without a license on this portion of the project. We turned the complaint over to Investigations and sent an Aiding and Abetting to the A- contractor.

It is also possible for a licensed contractor to aid and abet another licensed contractor (as opposed to aiding and abetting an unlicensed contractor as in the previous examples). ARS 32-1154(A) outlines grounds for suspension or revocation of a license and paragraph (10) of this section specifically states that the aiding or abetting a licensed or unlicensed person to evade the chapter can be grounds for discipline. This includes knowingly combining or conspiring with a licensed or unlicensed person allowing one's license to be used by a licensed or unlicensed person; or acting as an agent, partner, associate or otherwise of a licensed or unlicensed person with intent to evade this chapter. Additionally, paragraph (14) of the same "Grounds for Discipline" statute says that a license may be suspended or revoked if a licensed contractor knowingly enters into a contract with another contractor for work to be performed for which a license is required with a person not duly licensed in the required classification.

In summary, it would seem prudent for any contractor who is considering entering into a contractual agreement with another contractor to research the type of license that the other party has prior to signing a contract. In many cases, a contractor may not even be aware that he is aiding /abetting until it is too late. This could be avoided with some preliminary research prior to the signing of a contract.

